

EXHIBIT 25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

v.

Case No.

U.S. DEPARTMENT OF AGRICULTURE,

2:20-cv-00041-

U.S. SMALL BUSINESS

DCLC-CRW

ADMINISTRATION, SECRETARY OF

AGRICULTURE, and ADMINISTRATOR

OF THE SMALL BUSINESS

ADMINISTRATION,

Defendants.

VIDEOCONFERENCE DEPOSITION OF

TIFFANY TAYLOR

DATE: Thursday, April 21, 2022

TIME: 11:02 a.m.

LOCATION: Remote Proceeding

Washington, DC 20005

REPORTED BY: Timothy Guevara, Notary Public

JOB NO.: 5192242

A P P E A R A N C E S

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A P P E A R A N C E S (Cont'd.)
ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF
AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,
SECRETARY OF AGRICULTURE, AND ADMINISTRATOR OF THE
SMALL BUSINESS ADMINISTRATION:

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	Re: adverse impact	40
	(Exhibits attached.)	

1 overall for the government, what the goals are. But
2 I'm not involved in how it's determined what UDSDA's
3 goals are.

4 Q Do you know if they consider population
5 characteristics in setting goals for a particular
6 subset?

7 A I do not.

8 Q Do you know if there are any subgoals
9 pertaining to particular industries or NAICS codes?

10 A I don't believe there are. I've never heard
11 of them.

12 Q Are you familiar with the tracking systems
13 that track whether goals are met by your individual
14 agencies?

15 A I am familiar with the reports that are run
16 from the Federal Procurement Data System, FPDS. And
17 that is the official record for goals achievement.

18 Q And can you tell me what these reports show?

19 A They would -- they show each contract
20 action. And based on that action, if the -- it'll
21 show the vendor and the vendor type. And that vendor
22 type is based on their record in SAM, which is the

1 setting out these new ways for them to try harder?

2 A I don't -- we would not be responsible. But
3 we would provide support to the contracting officers
4 on how to do that.

5 Q Okay. Going back to the FPDS, is there any
6 way within the system to look at the subgoals as they
7 pertain to particular industries or NAICS codes?

8 A The standard report, no. But you could run
9 an ad hoc report that would, if you put in a certain
10 NAICS code, that it would show you what the goals are,
11 or what the -- what the actions are. And then you
12 would have to --

13 Q Calculate whether the goals have been met.

14 A -- calculate. Yes.

15 Q So what if you went into the system and you
16 pulled up, you know, one particular NAICS code, and it
17 turned out that all of the Small Disadvantaged
18 Business dollars, the entire goal, was being met in a
19 particular NAICS code, or a handful of them. Would
20 that be a problem?

21 MS. SMITH: Objection. Speculation.
22 You can answer, Ms. Taylor.

1 THE WITNESS: I don't believe it would
2 be a problem.

3 BY MS. SCOTT:

4 Q Okay. So the dollar goals or the percentage
5 goals can be distributed in any sort of fashion. It
6 doesn't necessarily have to be spread across
7 industries, or --

8 A Correct. The law does not specify how we
9 meet the goal but just that we meet it.

10 Q Okay. So are there any requirements to
11 apportion particular types of work set aside under the
12 8(a) program or just as Small Disadvantaged Business
13 goals, whether by NAICS code or particular types of
14 work, so that not all of the 8(a) or Small
15 Disadvantaged Business contracts are awarded in one
16 particular type of industry?

17 MS. SMITH: Objection. Complex. You
18 can answer, Ms. Taylor.

19 THE WITNESS: I agree, it is complex.
20 I'm trying to --

21 BY MS. SCOTT:

22 Q Okay. I can break it down a little bit.

1 I'm sorry about that. So I guess you told me that, in
2 the FPDS system, you can go and tease out by NAICS
3 code how many contracts or how many contract dollars
4 were made to a particular NAICS code.

5 A Correct.

6 Q Is that correct? Okay. So I guess my
7 question is: is there any requirement under the 8(a)
8 program or Small Disadvantaged Business goals that
9 tells contracting officers not to award all of these
10 contracts in a concentrated industry, in one
11 particular type of industry?

12 A There is no requirement or --

13 Q Okay.

14 A I think that's the way I can properly answer
15 that in the positive-negative. There is no
16 requirement to look at different NAICS codes.

17 Q Okay. And is there any requirement to award
18 all the 8(a) contracts or the Small Disadvantaged
19 contracts in a particular geographical area, so as not
20 to -- a requirement not to concentrate them all in one
21 particular geographical area?

22 A Is there a -- let me make sure I understand

1 the question. You're asking if there's a requirement
2 to not concentrate?

3 Q To not concentrate them in, you know, one
4 area of the country.

5 A There is no requirement to -- wait. See,
6 now I'm -- these negative things, I've --

7 Q Okay. Let me try to -- maybe I can phrase
8 it a little differently. I'm sorry. Is there any
9 requirement for the contracting officers, when they're
10 awarding 8(a) contracts or Small Disadvantaged
11 contracts, is there any requirement for them to spread
12 them out geographically?

13 A No.

14 Q Okay. So on the flip side of that, it would
15 be permitted if all of the 8(a) contracts and all of
16 the Small Disadvantaged Business contracts were
17 concentrated in one particular area of the country.

18 A Yes.

19 Q Okay. So could an agency meet its Small
20 Disadvantaged Business goals even if all of its Small
21 Disadvantaged Business contracts were in a single
22 industry or a single NAICS code?

1 A Yes, they could. Oh, sorry.

2 Q Are the goals different for each subagency
3 under USDA?

4 A This year, the goals are different. But in
5 the past, they were always the same.

6 Q Okay. Can you tell me why they're different
7 this year?

8 A They're different this year because there's
9 a presidential executive order that requires us to
10 meet a higher goal of twenty-one and a half percent.
11 And that's higher than what we've done in -- the goal
12 has been in the past. So we've had to be somewhat
13 strategic about how we might meet that. And we
14 reviewed the different Mission Areas to see who would,
15 you know, based on their vendor types, their
16 requirement types, their historical achievements, to
17 have them -- give them different goals based on their
18 likelihood to achieve them. Because twenty-one and a
19 half percent is quite high for every single agency.

20 Q Okay. So is NRCS one of the agencies that
21 has a higher goal?

22 A They all have higher goals than they had in

1 the past. They're just different than each -- each
2 agency -- or, sorry. It's -- it's actually by Mission
3 Area now, instead of by --

4 Q Can you explain what a Mission Area is?

5 A Yeah. So the Mission Areas are a group of
6 agencies that are -- have similar types of missions
7 and that are overseen by an undersecretary. And the
8 Mission Areas are what we look at for our contracting.
9 We -- we give our contracting authority to the -- the
10 Mission Areas. So we group -- group them together
11 based on what the Mission Area is, as opposed to the
12 agency.

13 Q Okay. So what is the Mission Area for the
14 NRCS?

15 A That is FPAC, the Farm Production and
16 Conservation.

17 Q Okay. So is FPAC's goal higher than some of
18 the other agencies'?

19 A Yes. Most likely. I haven't seen it
20 lately, but --

21 Q Okay. Is it among the higher goals, or is
22 it among the lower?

1 A I would have to go review. But they do have
2 more obligations than many. So it -- it is likely
3 higher.

4 Q Okay. So why was it given a higher goal?

5 A They -- typically, the more a Mission Area
6 spends in contracting, the more they obligate. Then
7 those dollars go towards UDSA's overall achievement of
8 the goal. And so, as percentages work, you want
9 the -- the Mission Areas who spend the most to also,
10 you know, have higher goals for small -- Small
11 Disadvantaged Business, Small Business Women Owned
12 [sic], et cetera, in order to meet those goals.

13 Q Okay. Are there separate goals within these
14 goals for prime contractors and subcontractors?

15 A No.

16 Q So when did the new, higher goals come into
17 effect?

18 A Fiscal year '22.

19 Q So was that October --

20 A Yes.

21 Q -- of '21? Okay. I'm going to go to topic
22 two, now. And I don't know -- would you like me to

1 contracting officer to distribute the 8(a) contracts
2 geographically?

3 A I have not done that, so I'm not aware of
4 any.

5 Q Are there any criteria requiring a
6 contracting officer to distribute 8(a) contracts by
7 industry or NAICS code?

8 A Not that I'm aware of.

9 Q Okay. Who has the authority to make an 8(a)
10 contract a sole-source offering?

11 A The FAR has specific guidelines on when it
12 should be a sole-source and when it should not. And
13 so the contracting officer would follow those
14 guidelines and then, of course, still have to get the
15 approval from the SBA.

16 Q Are there limits to how many contracts can
17 be offered as a sole-source offering through the 8(a)
18 program?

19 A There are -- there are no limits to the --
20 the number.

21 Q The number of contracts?

22 A Right.

1 THE WITNESS: Mm-hmm.

2 MS. SCOTT: Okay. So 12: 20, I guess?

3 MS. SMITH: Okay.

4 THE WITNESS: Okay.

5 THE REPORTER: Okay. We are off the
6 record at 12:03 p.m.

7 (Off the record.)

8 We are now back on the record at 12:24
9 p.m.

10 BY MS. SCOTT:

11 Q Okay. First of all, I just wanted to ask
12 you to clarify something that I believe you may have
13 said previously. You referred to a 21.5 percent total
14 goal as a new goal this year in an executive order.
15 Is that correct?

16 A The twenty-one and a half percent goal is
17 for the Small Disadvantaged Business, and that is
18 based on the President's Executive Order that he
19 wanted to increase overall Small Disadvantaged
20 Business awards for the government over the next
21 several years. And so USDA --

22 Q Do you know the --

1 A -- agreed to the twenty-one and a half
2 percent that SBA gave us.

3 Q So the --

4 THE REPORTER: My -- my apologies.
5 This is the reporter. Just I want to verify, just to
6 have a clean record. There was just kind of just a
7 very slight, one-word or two crosstalk, that I just
8 want to make sure that I get on the record. It's
9 Ms. Taylor mentioned "the increased overall award for
10 government over the next several years." If you could
11 just repeat from then, just so I can make sure I get
12 it on the record. I do apologize, and just as a
13 reminder that we speak one at a time, just so that I
14 can have the cleanest record possible. Thank you very
15 much.

16 THE WITNESS: Okay. The executive
17 order spells out that the President wants to increase
18 the overall government awards to Small Disadvantaged
19 Business to 15 percent over the next several years.
20 BY MS. SCOTT:

21 Q Okay. Do you know the number of the
22 executive order, by any chance?

1 Q -- for that year, that would be ...

2 A Column AH, I think you said 2021: 97.56
3 percent.

4 Q Okay. All right. Okay, I think I
5 understand it now. Thank you.

6 A Mm-hmm.

7 Q Okay. Just one other quick question: you
8 said that the SDB goals for 2022 are 21.15 percent,
9 right?

10 A Correct.

11 Q Okay. What were they for 2021, and 2020,
12 and 2019?

13 A They were the same all those years, the same
14 as the nationwide goal. I don't recall if it was
15 three or five percent. I get those confused.

16 Q I'm sorry, what did you say? Three or five
17 percent?

18 A It was either three or five percent.
19 Because there's a variety of small business goals
20 based on socio-economic. And without them right in
21 front of me, I don't recall if it's three or five.

22 Q Okay. And they were the same for 2021,

1 2020, and 2019?

2 A Mm-hmm.

3 Q Okay. And where could we find them online
4 if we're looking for that?

5 A They -- they may be on OS -- USDA/OSDBU's
6 website.

7 MS. SCOTT: Okay. All right. Well,
8 that's all I have. Thank you.

9 MS. SMITH: I just have a couple
10 questions.

11 EXAMINATION

12 BY MS. SMITH:

13 Q Ms. Taylor, when you testified that there
14 are different goals for each subagency in USDA, what
15 goals are you referring to?

16 A There are different goals for each subagency
17 for Small Disadvantaged Business. The other goals are
18 all the same across.

19 Q Can you clarify whether there are specific
20 goals for use of the 8(a) program?

21 A No. There's no specific goals for use of
22 the 8(a) program.

1 Q Does use of the 8(a) program go towards the
2 overall SDB goal?

3 A Yes.

4 Q You testified that FPAC has more SDB
5 utilization than some other subagencies in USDA. Is
6 that correct?

7 A Yes.

8 Q Why is that?

9 A It's likely that their requirements lend
10 themselves to the types of activities that 8(a)
11 vendors can provide.

12 Q Could you give an example of what you mean?

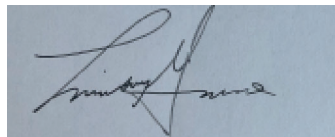
13 A So often, 8(a)-type requirements are
14 facilities-based. And FPAC has a lot of facilities
15 across the United States, a lot more than most of the
16 other subagencies. And so it's likely a reason why
17 they would have more 8(a) awards than others.

18 Q Or more SDB utilization generally? Is that
19 true? Is that an accurate statement?

20 A I don't know if for the SDB necessarily that
21 would be, overall, but -- because the SDB vendors
22 outside of the 8(a) program could have a variety of

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, TIMOTHY GUEVARA, the officer before whom
3 the foregoing proceedings were taken, do hereby
4 certify that any witness(es) in the foregoing
5 proceedings, prior to testifying, were duly sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a qualified
8 transcriptionist; that said digital audio recording of
9 said proceedings are a true and accurate record to the
10 best of my knowledge, skills, and ability; that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to the action in which this was taken;
13 and, further, that I am not a relative or employee of
14 any counsel or attorney employed by the parties
15 hereto, nor financially or otherwise interested in the
16 outcome of this action.

17 

18 TIMOTHY GUEVARA

Notary Public in and for the
19 District of Columbia

20
21 [X] Review of the transcript was requested.
22

Ultima Services Corporation v. US Department Of Agriculture
Tiffany Taylor (#5192242)

E R R A T A S H E E T

PAGE 11 LINE 11 CHANGE replace
"endowed" with "Director"

REASON transcription error

PAGE 34 LINE 4 CHANGE replace "it"
with "if"

REASON transcription error

PAGE 39 LINE 17 CHANGE replace "contractor"
with "contracting officer"

REASON transcription error

PAGE 41 LINE 16 CHANGE Replace "competent"
with "knowledgeable"

REASON Misspoke

PAGE 18 LINE 12-13 CHANGE delete "They are a
contract" and "the purpose of"

REASON Misspoke

PAGE 33 LINE 17 CHANGE delete "yes, that
is - I believe it is"

REASON Misspoke

p. 9 / L 15 & p. 10 / L 3 - "whenever"
to "when"
transcription error

Tiffany Taylor

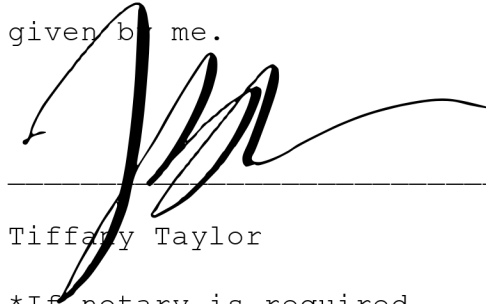
Date

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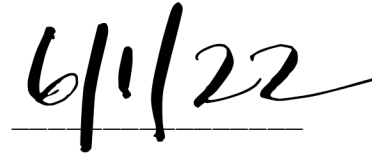
Ultima Services Corporation v. US Department Of Agriculture
Tiffany Taylor (#5192242)

ACKNOWLEDGEMENT OF DEPONENT

I, Tiffany Taylor, do hereby declare that I
have read the foregoing transcript, I have made any
corrections, additions, or changes I deemed necessary as
noted above to be appended hereto, and that the same is
a true, correct and complete transcript of the testimony
given by me.



Tiffany Taylor



Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20____.

NOTARY PUBLIC